In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 623

RUSSIAN VOLUNTEER FLEET, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES

OPINION BELOW

The opinion of the Court of Claims (R. 35–38) has not yet been reported.

JURISDICTION

The judgment of the Court of Claims was entered on April 1, 1929. (R. 39.) The plaintiff made a motion for a new trial, which was overruled on November 4, 1929. (R. [illegible].) The petition for a writ of certiorari was filed on February 3, 1930. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925.

QUESTION PRESENTED

May a corporation, a citizen of the Union of Soviet Socialist Republics, the sovereignty of which has not been recognized by the United States, maintain an action against the United States in the Court of Claims to recover compensation for the value of property requisitioned under the provisions of the Act of June 15, 1917?

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The Fifth Amendment to the Constitution provides, in part:

> No person shall * * * be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Judicial Code, Section 145 (U. S. C., Title 28, Section 250), provides in part:

> SEC. 145. The Court of Claims shall have jurisdiction to hear and determine the following matters:
>
> First. All claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an Executive Department, upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable: * * *.

Judicial Code, Section 155 (U. S. C., Title 28, Section 261) provides:

> SEC. 155. Aliens who are citizens or subjects of any government which accords to citizens of the United States the right to prosecute claims against such government in its courts, shall have the privilege of prosecuting claims against the United States in the Court of Claims, whereof such court, by reason of their subject matter and character, might take jurisdiction.

The Act of June 15, 1917, c. 29, 40 Stat. 182, 183, provides in part:

> Whenever the United States shall cancel, modify, suspend or requisition any contract, make use of, assume, occupy, requisition, acquire or take over any plant or part thereof, or any ship, charter, or material, in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

STATEMENT

The petitioner in January, 1917, acquired by assignment certain contracts for the construction of two steel cargo steamships, which contracts had previously been made between Norwegian citizens and the Standard Shipbuilding Corporation of New York. (R. 7–8.)

The United States Emergency Fleet Corporation, under authority delegated to it by the President pursuant to the provisions of the Act of June 15, 1917, c. 29, 40 Stat. 182, requisitioned these ships and the contracts therefor, and completed construction of the vessels (R. 10–13).

The Emergency Fleet Corporation, on March 5, 1920, fixed the compensation due petitioner on account of the requisitioning of the ships at $1,412,532.35, which sum included refund of certain progress payments made the shipbuilder. Payment of this sum was authorized to whomsoever the Department of State should designate as properly and legally entitled thereto, but payment was withheld pending advice from the Department of State as to how and to whom the money should be paid. (R. 14.)

The amended petition filed in the Court of Claims alleges that petitioner is a corporation duly organized under the laws of Russia. (R. 7.) Petitioner alleged and offered to prove that a citizen of the United States is accorded the right to prosecute claims against the Union of Soviet Socialist Republics in its courts. (R. 15, 35.)

The court below dismissed the petitioner's amended petition on the motion of the United States.

ARGUMENT

The Court of Claims held that the right of the petitioner to sue in that court was governed by Section 155 of the Judicial Code (p. 3, *supra*) and that, as the United States had not recognized the Union of Soviet Socialist Republics, the petitioner was not a citizen—

> of any *government* which accords to citizens of the United States the right to prosecute claims against such government in its courts

within the meaning of Section 155. (R. 35–38.) We are of the opinion that it is doubtful whether the provisions in the Act of June 15, 1917 (p. 3, *supra*), which give the person entitled to compensation for the requisition of property the right to sue in the Court of Claims, are subject to the provisions of Section 155. This Court has construed a somewhat similar statute, the Act of July 1, 1918, c. 114, 40 Stat. 704, as being independent of the provisions of Section 3447, R. S., which prohibits suits against the Government by an assignee of a patent for prior infringement. *Richmond Screw Anchor Co.* v. *United States*, 275 U. S. 331.

Moreover, the Court of Claims gave no consideration to the constitutional question which the petitioner raises and which may be entitled to consideration under the principle that a statute should be construed in such a way as to avoid serious doubt of

its constitutionality. Petitioner argued that the guarantee of the Fifth Amendment that private property shall not be taken for public use without payment of just compensation therefor applies to an alien like the petitioner. Although the petitioner has been awarded compensation by the delegate of the President in accordance with the provisions of the Act of June 15, 1917, the holding of the Court of Claims operates to deprive petitioner of any judicial determination of just compensation. Some support for the proposition that there must be provision for judicial determination of just compensation is to be found in *United States* v. *New River Collieries*, 262 U. S. 341, 343–344; *Davis* v. *Newton Coal Co.*, 267 U. S. 292, 301; and *Monongahela Navigation Co.* v *United States*, 148 U. S. 312, 327. The statement in *Bauman* v. *Ross*, 167 U. S. 548, 593, that the estimate of just compensation for property taken for the public use "may be entrusted by Congress to commissioners appointed by a court or *by the executive*" supports the contention to the contrary.

CONCLUSION

Although there is no square conflict of authority on the particular points involved, there is support in analogous cases in this Court for two of the points made by the petitioner. As far as we can ascertain, there is but one other case pending in which these particular points are likely to be raised, and consequently we do not feel that the instant case is one of general importance. Nevertheless, the case raises

the question of the constitutional rights of an alien in a substantial matter, and the United States does not oppose the issuance of the writ.

Respectfully submitted.

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